

California Regional Water Quality Control Board
North Coast Region

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R1-2005-0055

IN THE MATTER OF
VINTAGE GREENS LLC

FOR

VIOLATIONS OF WASTE DISCHARGE REQUIREMENTS
STATE WATER BOARD ORDER NO. 98-08DWQ
WDID NOS. 149S314410, 149S317862 and 149S317863

Sonoma County

The Executive Officer of the California Regional Water Quality Control Board, North Coast Region (hereinafter the Regional Water Board), hereby gives notice that:

1. On November 1, 2000, Vintage Greens LLC was issued a notice of permit coverage under the statewide National Pollutant Discharge Elimination System General Permit for Storm Water Discharges Associated With Construction Activity (Construction General Permit), Water Quality Order 99-08-DWQ, ID No. 149S314410, 149S317862, and 149S317863 for construction of the Vintage Greens 2, 3 and 4, a 65-acre phased construction site located off of Mitchell Road (1/2 mile west of Highway 101) in Windsor, Sonoma County, California (Site).
2. Site construction commenced during the winter of 2001 and is still ongoing as of the date of this Complaint. The construction project involves extensive site grading and soil movement. On numerous occasions during the fall and winter of 2002/2003, Regional Water Board staff (staff) performed erosion/sediment control inspections of this Site. Staff inspections found on multiple occasions that there were major portions of the development where erosion and/or sediment controls were either ineffective, non-existent or had been destroyed. Staff discussed their concerns regarding the inadequate sediment/erosion control measures to site personnel on several occasions. Staff alerted site personnel about how site conditions, if not upgraded, would result in significant sediment discharges to Windsor Creek, which borders the north side of the development and would result in enforcement actions by the Regional Water Board.
3. Efforts to control soil on-site have relied exclusively on sediment controls, practices that are employed in an attempt to remove sediments from storm water runoff. Few efforts were used to employ erosion control, those practices that are employed to try and keep dirt from becoming entrained in storm water runoff. The lack of significant erosion control measures put a heavy burden on the sediment control measures. The result of the lack of erosion control measures and inadequate and/or non-existent sediment control measures created a situation of significant sediment discharges from the site.

4. The first significant storm event of the season occurred on November 7-9, 2002. Specific Regional Water Board staff recommendations were made during the November 7, 2002 inspection of the site. The recommendations stressed the need to fill in the hundreds of eroded gullies that existed throughout the site, and the need for establishing a groundcover or initiation of other stabilization measures as a means of controlling erosion. A second set of storms during early December resulted in massive volumes of sediments discharging to the lower northwest corner of the development and to Windsor Creek. Site personnel were made aware of the Regional Water Board staff's intention to proceed with enforcement actions due to the lack of installation of effective erosion controls during the period between the early November and early December storm events.
5. Late December, 2002 and early January, 2003 inspections revealed that major portions of the site, both those areas where home construction was occurring, as well as those areas graded but not yet under construction, continued to be sources of sediment discharge. Sediments continued to flow into Windsor Creek throughout December and early January, gullies continued to deepen and sediment controls that were in place continued to fail. Maintenance of on-site sediment controls, other than the cleaning out inlet protections in areas of home construction, were not performed on a timely basis.
6. As of early January there had still been no effort to fill gullies, repair damaged management practices, remove sediments or apply groundcover. As a result, subsequent major storm events had continued to discharge massive amounts of sediments into Windsor Creek. Numerous site inspections and meetings with representatives of the Discharger failed to result in significant improvement. Staff re-inspected the site on January 15, 2003. Some sediment control work, in the form of additional haybale checkdams and gully filling, had begun. However, no seeding and/or groundcover work, or maintenance of collected sediments, had been performed. The inspection revealed that a significant amount of maintenance and erosion control work was still necessary.
7. The following facts are the basis for the alleged violations in this matter:
 - a. Erosion and sediment control (ESC) efforts on the active construction portion of this site were inadequate. Sediments coming off every homebuilding site continually overloaded inlet controls. Soils stockpiled between the house foundations and the street freely eroded onto the streets. The majority of the silt fencing was either placed incorrectly, or knocked down. No significant response was made after storm events to correct problems created by storm water runoff.
 - b. The areas on-site that have been graded, yet remain undeveloped, originally contained no ESC management practices, and until mid-January contained minimal controls. Scores of deep gullies existed for several months, and massive volumes of sediments choked the lone drop inlet that drained the area in question. Site inspections on November 7, December 13 and 19, 2002, and January 15, 2003, revealed little or no effort to stop the flow of sediments which have discharged to Windsor Creek, or threatened to discharge in future storm events.

- c. Silt fencing in place parallel to Windsor Creek was severely damaged during the initial November storm. During a February 5, 2003 inspection this silt fence, which was the only sediment control device between the creek and the northeast quarter of the development, was still lying flat on the ground. Inspections indicated that little or no maintenance was performed on these sediment control devices.
- d. The development's storm water discharge outfall contained a rock riprap apron that was partially eroded during the November 7, 2002 storm event. In the subsequent four weeks of dry weather that followed that storm, nothing was done to repair that apron. The series of December storms proceeded to produce runoff that further damaged the riprap areas and exposed soil the underlying soils. This condition created a huge eroded cavity along the full length of the discharge apron.
- e. Staff noted significant volumes of sediment-laden storm water runoff actively discharging from the site into Windsor Creek during four separate site inspections. Although sediments likely discharged from this site to Windsor Creek during every significant runoff generating event during the months of November and December 2002, and early January, 2003, this complaint is based only on those days of documented discharge.
- f. Water Quality Order No. 99-08-DWQ, which is applicable to this project, contains the following Discharge Prohibition:
 - “A.3. Storm water discharges shall not cause or threaten to cause pollution, contamination, or nuisance.”

And the following Receiving Water Limitations:

- “B.1. Storm water discharges and authorized nonstorm water discharges to any surface or ground water shall not adversely impact human health or the environment.
- B.2. The [Storm Water Pollution Prevention Plan (SWPPP)] developed for the construction activity covered by this General Permit shall be designed and implemented such that storm water discharges and authorized non-storm water discharges shall not cause or contribute to an exceedance of any applicable water quality standards contained in a Statewide Water Quality Control Plan and/or the applicable Regional Water Board's Basin Plan.

Observations by staff from inspections performed on November 7, 2002, December 13, 2002, December 19, 2002 and January 13, 2003 confirmed that conditions of pollution and/or nuisance were occurring as a result of sediment-laden storm water runoff discharged from this development site into the municipal storm drain system. These storm drains discharge directly to waters of the United States. The receiving waters have been listed as impaired due to excessive amounts of sediment. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section A.3, by discharging

storm water runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.

- h. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section B.1, by discharging sediment-laden storm water runoff into Windsor Creek, in amounts that could result in short and long-term adverse impacts to the environment.
- i. Vintage Greens LLC violated Water Quality Order 99-08-DWQ, Section B.2, by not implementing its SWPPP so as to minimize or eliminate the discharge of pollutants contained storm water runoff to state waters that caused, or threatened to cause pollution, contamination, or nuisance.
- j. Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to California Water Code Section 13243 or Article 1 of Chapter 5. As detailed above, Vintage Greens violated the discharge prohibitions and requirements of Water Quality Order No. 99-08-DWQ. Section 13385(c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against Vintage Greens LLC in this matter is calculated as follows:

Four days of observed discharge violations that occurred on November 7, December 13, December 19, 2002, and January 13, 2003.

Four days of discharge X \$10,000 per day = \$40,000

Total Potential Civil Liability: \$40,000

A significant volume of turbid storm water runoff was discharged from the Site into state waters. However, the discharge volume associated with these violations has not been determined. The calculation of a discharge volume would increase the maximum liability.

Vintage Greens LLC choose not to contest the original ACL complaint. In April 2004 Vintage Greens wrote to the Regional Water Board with an interest in pursuing a Supplemental Environmental Project to offset a portion of the ACL. During the period in which Supplemental Environmental Project selection was occurring, additional permit violations occurred on-site. These violations have resulted in an additional ACL fines, which have been incorporated into this Complaint. A description of the additional violations are as follows:

8. On April 7, 2004, Regional Water Board Staff member Andrew Jensen received a complaint from a co-worker regarding turbid discharges into Windsor Creek, which the complainant stated began on April 6, 2004. Regional Water Board staff conducted a site inspection on April 7, 2004, within one hour of receiving the complaint, and observed several wetland mitigation pools had been drained into the newly constructed Windsor Bypass Channel using pumps. Regional Water Board staff met with representatives of Vintage Greens and determined that the draining of the wetland features was being conducted to work on a roadside swale, that runs parallel to Windsor River Road. Turbid water was being discharged into Windsor Creek via the Bypass Channel at the time of the inspection, and based on the complaint and the volume of water already drained from the wetland pools, Regional Water Board Staff determined that the discharge had been occurring for at least two days. Several photos were taken of the discharge.

- a. As stated previously, Section 13385(a)(4) of the California Water Code provides for the imposition of civil liabilities against dischargers who violate any order or prohibition issued pursuant to California Water Code Section 13243 or Article 1 of Chapter 5. Section 13385(c) provides that the maximum amount of civil liability that may be imposed by the Regional Water Board is \$10,000 per day of violation, plus where there is discharge in excess of 1,000 gallons that is not susceptible to cleanup or cannot be cleaned up, an additional liability not to exceed \$10 per gallon of waste discharged and not cleaned up in excess of 1,000 gallons. The maximum civil penalty that could be imposed against Vintage Greens LLC in this matter is calculated as follows:

Two days of observed discharge violations that occurred on April 6 and April 7, 2004.

Two days of discharge X \$10,000 per day = \$20,000

Total Potential Civil Liability (when added to previously noted four days of discharge): \$60,000

A significant volume of turbid water runoff was discharged from the wetland mitigation site into state waters. However, the discharge volume associated with these violations has not been determined. The calculation of a discharge volume would increase the maximum liability significantly.

9. In determining the amount of any civil liability, pursuant to California Water Code, Section 13385(e), the Regional Water Board is required to take into account the nature, circumstances, extent, and gravity of the violation; and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. The Regional Water Board is also required to consider the requirement in this section that states that, at a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

- a) Nature, circumstances, extent and gravity of the violation: Vintage Greens LLC's erosion and sediment control efforts were inadequate to prevent the continued discharge of sediment laden storm water runoff. Maintenance of graded areas damaged by the storm events of November through early January was virtually non-existent. During this period, Regional Water Board staff continually notified on-site personnel of the need to improve and/or install basic erosion and sediment control practices. Water quality impacts to Windsor Creek were severe, ongoing, and virtually unabated due to a lack of erosion and sediment controls on those areas on-site graded but not built on. The nature, circumstances, extent, and gravity of the violation do not provide justification for reducing the amount of civil liability.
 - b) Violator's ability to pay: Staff has no information to indicate that the violator would be unable to pay any imposed administrative civil liability. The violator's ability to pay does not provide justification for reducing the amount of civil liability.
 - c) Prior history of violations: On February 21, 2002, the Regional Water Board issued an ACL complaint, No. R1-2002-0027 for \$3,000, for sediment-laden discharges related to Vintage Greens LLC's Windsor Soccer Park construction project, which Vintage Greens LLC paid the ACL in full. The prior history of violations does not provide justification for reducing the amount of civil liability.
 - d) Degree of culpability: Vintage Greens LLC is the construction storm water permit holder and developer of the project and, as such, it is responsible for permit compliance. Vintage Greens LLC were aware of Regional Water Board concerns, and yet failed to install and maintain erosion and sediment controls, including the extensive use of groundcover, on areas on-site that had been graded but not yet built upon. The degree of culpability does not provide justification for reducing the amount of civil liability.
 - e) Economic benefit: There was economic benefit derived from avoiding the installation and maintenance of adequate erosion and sediment controls until mid-January. Staff estimate the amount of savings realized was between \$5,000 and \$10,000.
 - f) Other matters that justice may require: Staff costs associated with this enforcement action are estimated to be \$8,000.
10. The issuance of this Complaint does not have the potential to result in a physical change in the environment and is therefore not a "project" subject to the provisions of the California Environmental Quality Act (CEQA) (Public Resources Code Section 21000 et seq.). It is also an enforcement action to protect the environment, and is therefore exempt from CEQA pursuant to Title 14, California Code of Regulations, Sections 15308 and 15321(a)(2).

Based on a review of the facts and the required factors, the Executive Officer of the Regional Water Board is issuing this Complaint with a proposed administrative civil liability in the amount of sixty thousand dollars (\$60,000.00), for the discharges described above.

VINTAGE GREENS LLC IS HEREBY GIVEN NOTICE THAT:

1. The Executive Officer of the Regional Water Board proposes that the Discharger be assessed a Administrative Civil Liability Penalty in the amount of \$60,000 for violations that occurred from November 7, 2002, through April 7, 2004.
2. A hearing shall be conducted on this Complaint by the Regional Water Board on August 10, 2005, unless the Discharger waives the right to a hearing by signing and returning the waiver form attached to this Complaint. By doing so, the Discharger agrees to:
 - a. Pay an administrative civil liability of \$60,000 in full within 30 days of the date of this Complaint, or
 - b. Propose an amendment to Vintage Green's August 4, 2004 Supplemental Environmental Project (SEP) in an amount up to \$45,000 and pay the balance of the penalty (\$15,000) within 30 days of the date of this Complaint. The sum of the amended SEP amount and the amount of the fine to be paid to the State Water Pollution Cleanup and Abatement Account shall equal the full penalty of \$60,000.
3. If the Discharger chooses to propose an amended SEP, it must submit a proposal within 30 days of the date of this Complaint to the Executive Officer for conceptual approval. Any SEP proposal shall conform to the requirements specified in Section IX of the Enforcement Policy, and the attached *Standard Criteria and Requirements for Supplemental Environmental Projects*. If the proposed SEP is not acceptable, the Executive Officer may allow the Discharger 30 days to submit a new or revised proposal, or may demand that, during the same 30-day period, the Discharger pay the first installment of the suspended penalty of \$22,500. All payments, including money not used for the SEP, must be payable to the State Water Pollution Cleanup and Abatement Account.
4. If the Discharger waives the hearing, the resulting settlement will become effective on the next day after the public comment period for this Complaint is closed, provided that there are no significant public comments on this Complaint during the public comment period. If there are significant public comments, the Executive Officer may withdraw the Complaint and reissue it as appropriate.
5. If a hearing is held, the Regional Water Board may impose an Administrative Civil Liability in the amount proposed or for a different amount; decline to seek civil liability; or refer the matter to the Attorney General to have a Superior Court consider enforcement.

6. Regulations of the United States Environmental Protection Agency require public notification of any proposed settlement of the civil liability occasioned by violation of the Clean Water Act, including NPDES permit violations. Accordingly, interested persons will be given 30 days to comment on any proposed settlement of this Complaint.

Ordered by _____

Catherine E. Kuhlman
Executive Officer

June 8, 2005

(060805_prk_VintageGreensComplaint2)